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SUBJECT: JUSTICE MINISTER HARABIN POISED TO BECOME SUPREME COURT CHAIRMAN

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1B. BRATISLAVA 47

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11. (C) Introduction and Summary: The Slovak Judicial Council will elect a new Supreme Court Chairman on June 22. It appears virtually certain that Justice Minister Stefan Harabin, to whom half of the members of the Judicial Council are subordinate or otherwise beholden, will win. Justice and the rule of law will be the big losers. Under the guise of "enhancing judicial independence," Harabin has managed to create a closed system in which he and his allies throughout the judiciary have enormous power but almost no accountability. The Justice Minister, whose incessant campaign to close the Special Court against Corruption recently produced a tragi-comically flawed finding by the Constitutional Court shutting down the Special Court, has already done grave damage to the Slovak judiciary. But if pending legislation (drafted by Harabin himself) designed to give the Chairman of the Supreme Court broad new powers passes, Harabin's hegemony will essentially be total and complete. To appreciate Harabin's judicial orientation, it's worth noting that during a recent visit by his counterpart from Moscow, Harabin said that the Russian model had been the "inspiration" and basis for the draft Slovak legislation.
End Introduction and Summary.

From the Ashes...

12. (C) Only a few years ago, it seemed that Stefan Harabin would be consigned to the dust bin of Meciar-era history. In 2002, Parliament unsuccessfully sought to strip him of his role as Chairman of the Supreme Court because of allegations of unethical and inept performance. In 2003, his re-appointment to the job was stopped. With his ouster from the chairman's position, several important judicial reforms which had been blocked by Harabin were undertaken. Harabin's successor at the Justice Ministry pushed through a series of legislative and institutional innovations, including the Special Court Against Corruption, that bolstered ethical and effective implementation of justice.

...to the Pinnacle

13. (C) What a difference three years and an election can make. In 2006, Harabin was nominated as Minister of Justice by Vladimir Meciar, who himself had reemerged as a junior coalition partner in Prime Minister Robert Fico's new government. From the day he took office, Harabin began a systematic campaign to oust reformist judges, to populate the Justice Ministry with pliant political hacks, to undue

important legal reforms and to resuscitate the careers of other judges, who were -- like himself -- suspected of corrupt and unethical acts. In some cases, the judges he installed in key positions were not only rumored to be corrupt, but had been formally sanctioned for it.

4.(C) Despite low public ratings, proven ties to a suspected heroin dealer, numerous public lies, and vulgar verbal attacks on judges and politicians, Harabin has the support that matters: from the Fico government and a wide range of judges. The question is "why?" With respect to judges -- more than 25 regional judicial councils have issued statements supporting his candidacy for the Supreme Court -- perhaps the most basic reasons can be reduced to money and fear. When Harabin came into office, one of his first moves was to pay judges overdue bonuses. During the last years of the Dzurinda Government, these bonuses were not forthcoming due to budget constraints. Not only did Harabin secure them from 2006 on, he was able to cover past, unpaid bonuses. At the same time, Harabin employed fear tactics by removing judges in favor of his allies and supporting an explosion of disciplinary actions against reformist judges or against those who -- in some way -- were perceived as having crossed him or his supporters.

Manipulating the System

¶5. (C) We recently attended a disciplinary hearing for Anna Benesova, a judge accused of having forbidden the audiotaping of a court proceeding. At the hearing, two judges who presided with her testified to the fact that she had not

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banned the recording, but had merely tried to gain control over a chaotic hearing in which a defendant was disorderly and disrespectful. The true motivation behind the disciplinary action appears to have been quite different, and directly linked to Harabin himself. Judge Benesova was presiding over a separate libel case that Harabin had brought against the daily newspaper Sme. Apparently, it was evident that she did not plan to rule in favor of Harabin. On the day her libel ruling was due, Harabin announced that Benesova was to be immediately suspended pending resolution of a complaint he had received about her. To this day, the judge has been on suspension, receiving a significantly reduced salary. The new judge assigned to the Harabin libel case unsurprisingly ruled in the Justice Minister's favor.

¶6. (C) The number of specious, politically-motivated disciplinary actions has sent a chill through the judiciary. Some courageous judges are beginning to speak up, but they are still a small minority. In a recent op-ed, one quoted a fellow judge to describe the prevailing attitude: "I have a family, I can't do it. The very next day I could expect an inspection, followed by a disciplinary proceeding and a recall." The author of the piece, Judge Katarina Javorcikova concluded: "I, too, have a family, loans, and the same fear. But unlike them, fear about myself is lesser than the fear of the reality that judges will become nothing but tools in the hands of powerful figures in the Slovak justice sector."

Compromising Material

¶7. (C) Why the Slovak government, and by that we mean Prime Minister Fico and his Smer colleagues, continues to acquiesce in Harabin's heavy-handed machinations is less clear. It is commonly assumed in Slovak political circles that Vladimir Meciar and Harabin hold too many compromising chits for Fico to push back. Since Meciar notoriously employed the Slovak services in the 1990s in a constant campaign to track and intimidate his opponents -- and even his allies -- it's likely that he possesses incriminating information about many of today's prominent officials and businessmen, including Smer officials and their many dodgy financial backers. Given

the now-poisonous relationship between Meciar and Slovak President Gasparovic -- who was once Meciar's deputy and who is widely reported to have been involved in suspect privatizations -- many believe that Gasparovic will be equally vulnerable to such pressure when it comes time to formally ratify Harabin's appointment.

The Arrogance of Power

¶ 8. (C) With the well-wired support of the judiciary and the government, Harabin has reached new heights in arrogance. Shortly after his nomination to be Supreme Court Chairman, he sent letters to three Slovak dailies -- Sme, Pravda, and Plus Jeden Den -- demanding what the UK Ambassador characterized as "extortionist" payments. In each letter he claimed that unspecified articles published over the past year have damaged his reputation by linking him to the mafia. He asked for payment of 200,000 Euros in damages from each paper, to be sent to him directly within 40 days. He then closed each letter with a none-too-subtle hint, reminding the publishers that he has previously won larger awards from them in court.

¶ 9. (C) We will report septel on this latest effort to cow the press, as well as the rash of high-level libel suits won by the Justice Minister and other prominent political figures. But on June 6, Sme and Pravda printed Harabin's request and stated clearly their belief that it was a blatant attempt to intimidate the media in the run-up to the June 22 Supreme Court election. In a show of defiance, Sme also re-ran the text of the recorded phone call between Harabin and suspected heroin trafficker Baki Sadiki that is presumably the basis for Harabin's demand. One recent story demonstrates why Harabin may have taken this step: The Slovak Governance Institute, an NGO, reported that while he was serving as Supreme Court Chairman in 2001 and 2002, Harabin awarded himself the largest bonuses ever given to a judge. In 2001, he gave himself an extra 400,000 Slovak Crowns; in 2002, it was 600,000. Harabin, who has argued for years that higher pay for Special Court judges (whose salaries were set by Parliament) was discriminatory, clearly had no qualms about exploiting a gap in the law to provide himself wildly inflated compensation.

¶ 10. (C) Harabin's willingness to push the envelope of the law

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(not to mention the truth) isn't just an domestic problem. In response to a request from the OECD Chairman to explain why Slovakia had not, contrary to commitments, adopted sufficient legislation on corporate criminal liability, he responded that the decision of the Constitutional Court on the constitutionality of the Special Court would enable him to amend the Slovak Criminal Code appropriately. This is a patent fabrication; there neither was nor is a connection between the two issues.

New Powers Await

¶ 11. (C) As described reftels, Harabin has set the stage for taking near complete control of the judiciary. Pending before Parliament is legislation unanimously approved by the Fico government that would transfer key competencies from the Ministry of Justice to the Chairman of the Supreme Court -- just as Harabin himself prepares to make the same move. Most importantly, the Chairman and the Judicial Council will be able to decide when to suspend or remove a judge or to reinstate one. According to Harabin himself, the inspiration for this legislation and division of powers came from Russia.

We're left to wonder whether Harabin didn't also look to Russia in conceiving the notion of moving himself from one position to another to hold onto power for as long as possible.

Embassy Comment

¶12. (C) Two months ago we characterized the situation in the Slovak judiciary as "critical" (ref A). Since then, the prognosis has gotten even worse and Harabin has grown ever bolder. His recent letters to Slovak publishers demonstrate his sense of impunity and his utter disregard for such fundamental democratic values as a free press. We concur wholeheartedly with a number of like-minded EU embassies that should Harabin be elected as Supreme Court Chairman at the same time that the pending legislation takes effect, the negative consequences for justice and rule of law in Slovakia simply cannot be overstated. Neither the USG -- nor any other ally -- can or should intervene in Harabin's election to the Supreme Court. But the British and Dutch ambassadors intend to flag for Prime Minister Fico how this confluence of developments will appear in the eyes of his western partners and the Charge plans to join them. While we hold out little hope that Fico will do anything to modify the legislation, we will at least be on record as having voiced our concerns and alerted him to how negatively these developments will be perceived among Slovakia's friends and allies.

EDDINS